

REMARKS

Claims 15-30 were previously withdrawn without prejudice to pursue in a later filed continuation, continuation in part, or divisional application. With this amendment, claims 15-30 have now been cancelled as they are non-elected claims. Claims 1, 14, 31 and 32 have been amended to more clearly set forth the claimed invention. Claims 33-35 have been added.

Summary of Office Action

Claims 31-32 have been objected to as being unclear. Claims 1 and 31-32 have been rejected under the judicially created doctrine of obviousness-type double patenting. Claims 1, 10, 14, and 31-32 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,373,520 ("Cadieux"). Claims 2-10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cadieux in view of U.S. Patent Nos. 4,972,494 ("White"), 4,266,674 ("Bell"), 5,013,905 ("Neri"), and 5,366,096 ("Miller"). Finally, claims 11-13 are objected to by the Examiner but have been indicated to be allowable if rewritten in independent form.

As set forth in detail below, Applicants have addressed in this response each of the issues raised by the Examiner. Thus, Applicants respectfully submit that all currently pending claims are in condition for allowance.

Claim Objections

Method claims 31-32 have been amended to remove the "means for" language as requested by the Examiner. Thus, these objections have been overcome.

The Double Patenting Rejection

With this response, Applicants are submitting a terminal disclaimer in accordance with 37 C.F.R. 1.321(c) with respect to U.S. Patent No. 6,667,802. As such, the double patenting rejection with respect to Claims 1 and 31-32 has been overcome.

Claim Rejections – 35 U.S.C. 102

The Examiner has rejected claims 1, 10, 14, and 31-32 as being anticipated by Cadiieux. Applicants respectfully traverse this rejection. Independent claims 1 and 31 have been amended to more clearly recite the originally claimed inventions. In combination with the following remarks, Applicants believe that the rejections under 35 U.S.C. 102(b) have been overcome.

Cadiieux focuses exclusively on a cigarette inspection system that is designed to identify defects in identical packages traveling along a conveyer system. Cadieux does not disclose in any way a system or method of identifying non-conforming groups of items within a package, as is called for by claims 1, 10, 14, and 31-32.

For instance, and as confirmed by the portions of Cadieux highlighted by the Examiner, Cadieux discloses an inspection system that examines the actual packaging material moving through an assembly line, i.e. the cigarette container (or box), rather than the items within the package, i.e. the cigarettes themselves. The inspection system of Cadieux examines for the presence or absence of foil wrappers on the outside of a cigarette box (See e.g. Col. 4:56-63) using a commercially available foil detection sensor. Alternatively, Cadieux discloses the use of a vision inspection system utilizing a camera to compare a picture of the passing cigarette box with a picture stored in memory. (See e.g. Col. 5:1-28) The vision inspection device in Cadieux looks exclusively at the outside of the package itself, and does not, in any way, account for the items contained within the package. As such, the Examiner's statement at page 3 of the office

action that “Cadieux et al discloses a method of identifying non-conforming groups of items within a package” is plainly incorrect. Cadieux does not speak of an inspection system that can identify non-conforming groups of items within a package. Similarly, the Examiner’s statement on page 4 of the office action that Cadieux discloses “obtaining a reference signal considered to be electrical signal from camera (22, 24, 26 of figure 2) to store in a processor (42 of figure 2) is being a predetermined pixel value corresponding to a package having conforming groups of items (col. 8 lines 10-12 and 19-21)” is also plainly incorrect. As mentioned above, Cadieux does not disclose, either explicitly or inherently, a system for identifying non-conforming groups of items within a package. The Examiner’s citations to Cadieux are all concerned with an examination of the package itself. (See e.g. Col. 8:10-21 relied upon by the Examiner to support claim rejection)

Specifically with respect to the cigarette inspection system disclosed in Cadieux, Cadieux mentions nothing about an inspection system that looks at any of the individual items (i.e. cigarettes) that are contained within the package, let alone a group of items (i.e. a row of cigarettes), to determine whether the contents of the package are conforming or non-conforming. In essence, Cadieux is concerned exclusively with the external package appearance and not with what is actually contained within the package. The same arguments apply with equal force to the remaining citations relied upon by the Examiner on page 4 of the office action.

Unlike the disclosure in Cadieux, independent claims 1 and 31 as amended each require obtaining a composite signal that corresponds to an overall signal related to a group of items within the package, rather than a signal that focuses on the conformance of the packaging material itself. The composite signal may also take into account the effects of the packaging itself as well as the items within the package. Cadieux, either alone, or in combination with any

of the other references cited by the Examiner, does not teach the invention as set forth in amended independent claims 1 and 31. As such, Applicant respectfully submits that the 102(b) rejection has been overcome and that the claims are in condition for allowance. Claims 10, 14, and 32 depend from independent claims 1 and 31 and, for the same reasons stated above, are also in condition for allowance.

Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected claims 2-10 under 35 U.S.C. 103(a) as being unpatentable over Cadieux in view of several other references (White, Bell, Neri, and Miller). The arguments set forth above with respect to Cadieux apply with equal force here and they are incorporated by reference. Because the Examiner's arguments concerning the disclosure of Cadieux are inherently incorrect, and misstate what is disclosed by Cadieux, Cadieux cannot support the Examiner's arguments under 35 U.S.C. 103(a). Nevertheless, Applicants submit that the amendments to independent claims 1 and 31 are sufficient to address the Examiner's rejections.

Allowable Subject Matter

The Examiner has indicated that claims 11-13 would be allowable if rewritten in independent form to include all of the limitations of the base claim and intervening claims. Applicants have submitted new claim 33 which corresponds to original claim 11 including the limitations of the original base claim. Claims 34-35 depend from new claim 33. Thus, Applicants submit that there is nothing preventing the allowance of new Claims 33-35.

CONCLUSION

In view of the foregoing, Applicants respectfully submit that no further impediments exist to the allowance of this application and, therefore, solicit an indication of allowability. However, the Examiner is requested to call the undersigned if any question or comments arise.


The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R.
§§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to
Deposit Account No. 50-1283.

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COOLEY GODWARD LLP
Attention: Patent Group
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA 20190-5601
Tel: (720) 566-4016
Fax: (720) 566-4099

Respectfully submitted,

COOLEY GODWARD LLP

By: 
Craig A. Neugeboren
Reg. No. 39,314